

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.222 of 2014

Along with

Interlocutory Application No. 950 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 11025 of 2006

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1. Sheo Murat Dubey (Dead Persons), Son Of Late Kapildeo Dubey Resident Of Village- Dubauli, P.S.- Belaon, District- Kaimur at Bhabua through his Heirs and Legal Representatives
 2. (1) Mosmat Kunti Kuer W/O Late Sheo Murat Dubey R/O Village- Dubauli, P.S.- Belaon, District- Kaimur at Bhabua
(2) Ram Chandra Dubey S/O Late Sheo Murat Dubey R/O Village- Dubauli, P.S.- Belaon, District- Kaimur at Bhabua
(3) Laxman Dubey S/O Late Sheo Murat Dubey R/O Village- Dubauli, P.S.- Belaon, District- Kaimur at Bhabua
(4) Ram Humkar Dubey S/O Late Sheo Murat Dubey R/O Village- Dubauli, P.S.- Belaon, District- Kaimur at Bhabua

.... Appellant/s

Versus

1. The State of Bihar
2. The Deputy Director Of Consolidating, Bihar at Patna
3. The Deputy Director Of Soncolidation, Rohtas at Sasaram
4. The Consolidation Officer, Bhagwanpur, District Kaimur
5. Sri Kishun Dubey Son Of Late Satram Dubey Resident Of Village- Dubauli, P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua
6. Balaram Dubey Alias Munnu Dubey Son Of late Satram Dubey Resident Of Village- Dubauli, P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua
7. Rambharat Dubey Son Of Late Satram Dubey Resident Of Village- Dubauli, P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua
8. Pramod Dubey Son Of Late Rajendra Dubey Resident Of Village- Dubauli, P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua
9. Gajendra Dubey @ Achhaibar Dubey Son Of Late Ramjage Dubey Resident Of Village- Dubauli, P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua
10. Girija Kuer W/O Late Sri Kawal Dubey Resident Of Village- Dubauli, P.S.-

Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua

11. Rajbansh Dubey Son Of Late Sri Kawal Dubey Resident Of Village- Dubauli,

P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua

12. Ramashankar Dubey Son Of Late Sri Kawal Dubey Resident Of Village-

Dubauli, P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua

13. Rambali Dubey Son Of Late Sri Kawal Dubey Resident Of Village- Dubauli,

P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua

14. Ajai Kumar Dubey Son Of Late Ram Awadh Dubey Resident Of Village-

Dubauli, P.S.- Rampur, P.O.- Rudarwar Kala, District- Kaimur at Bhabua

.... Respondent/s

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Appearance :

For the Appellants : Mr. Rajesh Kumar with
Mr. V. K. Seth, Advocates

For the State : Mr. Anil Kumar Upadhyay, Advocate

For the Respondent No. 7 : Mr. Arabind Nath Pandey, Advocate

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**CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA
and
HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 18-08-2016

Re.: Interlocutory Application No. 950 of 2014

The application is for condonation of delay of 31 days in
filing of the appeal.

For the reasons mentioned in the application, we find
that sufficient cause is made out for condonation of delay.
Consequently, the delay of 31 days in filing of the appeal is condoned.

Interlocutory Application stands disposed off.

Re.: Letters Patent Appeal No. 222 of 2014

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 27th June, 2013 whereby the writ application was dismissed after rejecting the prayer of the appellants for substitution after the death of the sole petitioner.

The order under challenge in the writ application is to an order passed by the Deputy Director of Consolidation (Headquarter), Bihar, Patna on 12th September, 1995 (Annexure-4) to the writ petition. The writ petition was filed in the year 2006 i.e. almost after ten years of the passing of the impugned order. The sole petitioner died on 09.09.2008 but an application to substitute his legal heirs was filed on 22nd March, 2013 i.e., after delay of 4 years, 6 months and 12 days. The learned Single Bench has declined to allow the application for substitution.

Learned counsel for the appellants before this Court argued that the writ applicant was in custody and, therefore, could not prosecute the civil dispute regarding his land. It was after release on bail; he has collected the papers and filed writ application.

We have heard learned counsel for the parties and find no merit in the argument raised.

The averments made by the deceased in the writ application is as under:

“ 16. That it is worth while to mention here in that all the petitioner's family have been implicated in criminal case

by respondents in the year, 1989 and petitioner's family had been disturbed economically and mentally.

17. That all the family members of the petitioner were in custody in year, 1995 after conviction in trial Court. After released on bail, the petitioner approached in the office of Director of Consolidation, Bihar for get the certified copy of the impugned order but he failed to receive the certified copy of the impugned order and all records.

18. That it is pertinent to mention here in that the petitioner was approached from advocate and was consult for filing to the writ petition in the year, 1996 to the advocate namely Vijay Shankar Pandey but after lapse of 10 years, the learned advocate could not be received a certified copy of impugned order in the office of Director of Consolidation, Bihar at Patna.”

A perusal of the said averment does not show that on which day the writ applicant was released on bail. In fact, the averment made in paragraph-18 shows that the writ applicant approached an Advocate in the year 1996 but for 10 years, the Advocate could not receive any certified copy of the order. A perusal of the certified copy of the order available with the records of the case shows that the same was applied on 17th November, 1995 and was made available on the said date itself. Thus, it appears that the writ applicant has not approached the writ Court with clean hands as well. He has not come with true and full disclosure of the facts.

Learned counsel for the appellants points out that an

application for substitution was filed on 07.07.2009 bearing I.A. No. 4015 of 2009 but the same was misplaced in the office and then a substituted I.A. No. 2395 of 2013 was filed again. The averments made in the memo of appeal are not complete. It is not pointed out that on what date the office pointed out that the I.A. is misplaced. Still further, the record of the High Court does not show that any such I.A. was in fact filed.

Therefore, we find that on both counts that delay and laches in filing of the writ petition and also delay in filing an application for substitution of the legal heirs, the writ petition has been rightly dismissed.

We do not find any error in the order passed by the learned Single Bench which may warrant interference in the present Letters Patent Appeal, and is accordingly, dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

P. Kumar/Anjani

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24.08.2016
Transmission Date	N/A